

No. 2. The Commissaries found Mr. Gordon inadmissible; and the Court at first adhered; but afterwards, on advising a reclaiming petition, with answers, they, by a narrow majority, 'repelled the objections.'

3. Alexander Farquharson deponed *in initialibus*, that, 'since he received his first citation, Mr. Anderson, the defender, has interposed his credit for the deponent, by indorsing bills without value to the amount of several hundred pounds.' It further appeared, that the defender had, for ten years preceding, occasionally interposed his credit for Farquharson, and that Farquharson had lately become bankrupt, while considerably indebted to the defender.

The pursuer contended, that, in these circumstances, Farquharson could not be an impartial witness, and that the pecuniary assistance, obtained from the defender after citation, must, in legal construction, be regarded as a reward for giving his evidence; Ersk. B. 4. Tit. 2. § 25.; Leach's Crown Cases, pp. 6. 139. 144.

Answered: If the defender had never assisted the witness till the rise of the present question, there might be room for the present objection; but, as the fact turns out, it would be fatal to the administration of justice in a commercial country, if the mere circumstance of a witness and a party standing in the relation of debtor and creditor, should deprive the latter of his debtor's evidence. See 7th February 1711, Farquhar against Campbell, No. 142. p. 16731; 30th November 1716, Town of Perth against Moncrieff, No. 154. p. 16737.

The Commissaries sustained the objection, and the Court adhered.

Lord Ordinary, *Craig*.

Act. *Jas. Gordon*.

Alt. *W. Erskine, Rat.*

R. D.

Fac. Coll. No. 200. p. 459.

1801. July 11. MARY MACGREGOR against MALCOLM MACGREGOR.

No. 3.
Objection of
partial coun-
sel sustained.

In a declarator of marriage brought by Mary Macgregor against Malcolm Macgregor, the pursuer proposed John Macfarlane, her cousin-german, as a witness in her favour, and particularly as to an alleged bedding between the parties, where one other person only was present.

The defender objected to Macfarlane's admissibility, that he had given partial counsel in favour of the pursuer.

From a proof of the objection, and Macfarlane's deposition *in initialibus*, it appeared that he had introduced the pursuer to her law-agent, had been present at the first consultation between them, and had otherwise taken an interest in her favour.

The Commissaries sustained the objection. A bill of advocation having been presented, the Lord Ordinary, at desire of parties, reported the case on memorials.

No. 3.

The defender held the objection to be completely relevant, and proved, Stair, B. 4. Tit. 43. § 9; Erskine, B. 4. Tit. 2. § 25; 21st January 1797, Bell against King, No. 210. p. 16786; and various other cases, *vide* WITNESS.

The pursuer disputed the import of the proof, and contended, that the witness should be admitted *cum nota*, particularly as there was a *penuria testium* as to the facts expected to be established by his evidence; 19th December 1786, Scott against Caverhill, No. 204. p. 16779.

The Court, without hesitation, supported the judgment of the Commissaries.

Lord Ordinary, *Meadowbank*.Act. *Connell*.Alt. *Ar. Campbell*.

D. D.

Fac. Coll. No. 247. p. 561.

1806. December 2. *MACALPINE against MACALPINE.*

No. 4.

In an action at the instance of Robert Macalpine, spirit-dealer in Glasgow, against James Macalpine his brother, the object of which was to set aside two dispositions to certain heritable subjects, which it was alleged the said James had obtained in his own name, when he acted really for behoof of his brother, a proof was allowed by the Lord Ordinary. In the course of this proof, the pursuer Robert Macalpine adduced William Bogle, writer in Glasgow, as a witness.

An agent may be adduced as a witness by the party for whom he acts.

Mr. Bogle had originally been employed as agent for the defender in the business, which gave rise to the present dispute, but for several years had not acted in that capacity. He had afterward been employed by the pursuer, and had acted as his country-agent in the present process. The facts, however, about which Mr. Bogle was proposed to be examined, occurred prior to the commencement of his agency for the pursuer.

The defender objected to his admissibility as a witness, on the footing of his being the confidential agent of the pursuer, and the commissioner took his evidence, but ordered it to be sealed up, to be disposed of as the Court might determine.

The Lord Ordinary, after hearing parties, appointed the deposition to be opened, and to be made part of the proof.

The defender reclaimed to the Court, and quoted the cases, Adam against Braco, July 2d, 1743, No. 176. p. 16745; Lindsay against Ramsay, July 12th, 1743, No. 168. p. 16746; Govan against Young, June 18th, 1752, No. 188. p. 16764; where the objection of agency was sustained.